Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 80-533

IN THE
Supreme Court of the United States

October Term 1980

ANDRE W. LA CORBIERE,

Petitioner,

vs.

SAN DIEGO STATE UNIVERSITY, and TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY AND COLLEGES,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

1. May a defendant-employer rebut a *prima facie* Title VII violation, established under the disparate impact theory, with evidence of the plaintiff-employee's alleged poor performance under the job requirement (a certain training program) that has the disparate impact?

2. Is a plaintiff required to show, by statistics or otherwise, a history of racial discrimination by the defendant-employer in order to prove the employer's present violation of Title VII under the disparate impact theory?

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OPINIONS BELOW

Neither the Memorandum opinion of the Court of Appeals for the Ninth Circuit nor the Findings Of Fact And Conclusions Of Law of the District Court for the Southern District of California is officially reported. Both the Memorandum opinion and the Findings Of Fact And Conclusions Of Law are set forth in the appendix.

JURISDICTION

The Memorandum opinion of the Court of Appeals for the Ninth Circuit was entered on June 4, 1980. In response to a timely petition for rehearing an Order amending the Memorandum opinion and denying the petition for rehearing was entered on July 16, 1980; and this petition for certiorari was filed within ninety (90) days after the entry of said Order. The jurisdiction of this Court is invoked pursuant to 28 USC § 1254(1).

STATUTORY PROVISIONS INVOLVED

The pertinent section of Title VII of the Civil Rights Act of 1964, as amended, 42 USC § 2000e et seq., provides:

> Section 703(a), 42 USC § 2000e-2(a):
>
> It shall be an unlawful employment practice for an employer--
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation,

terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

STATEMENT OF CASE

On November 19, 1976, Andre W. La Corbiere (hereinafter referred to as "Petitioner") commenced this action in the United States District Court for the Southern District of California against San Diego State University and the Trustees of the California State University and Colleges (hereinafter referred to as "Respondents"). Petitioner, a black person, alleged in his complaint that Respondents, among other things, discriminated against him on the basis of his race and in violation of Title VII and 42 USC § 1981 when Respondents terminated his employment. Petitioner commenced this action within ninety (90) days after receiving a right-to-sue letter from the Equal Employment Opportunity Commission.

The jursidiction of the District Court was invoked pursuant to 28 USC § 1331 and 28 USC § 1343.

Petitioner was hired by Respondents to the position of Campus Peace Officer at San Diego State University on August 15, 1974. Prior to his employment with Respondents, Petitioner was employed by the Chicago Police Department as a police

officer for a period in excess of twelve (12) years. Petitioner's employment with the Chicago Police Department was in every respect satisfactory or above, and during said employment Petitioner received several commendations relative to his performance of duty.

Petitioner was employed with Respondents from August 15, 1974, to October 22, 1975. During his employment with Respondents, Petitioner's job performance was evaluated on two (2) occasions. In each evaluation Petitioner received a "good" or "superior" rating with respect to each aspect of job performance, and in each evaluation it was recommended that Petitioner be retained as a Campus Peace Officer. Moreover, Petitioner's second evaluation recommended that Petitioner receive a Merit Salary Increase and recommended Petitioner for tenure. Petitioner also received written praise or commendation on two (2) occasions during his employment as a Campus Peace Officer.

Pursuant to California law it was necessary for Petitioner to be certified by the California Commission on Peace Officer Standards and Training (hereinafter referred to as "POST") within 18 months after he was hired by Respondents. POST certification may be obtained through the completion of a 200-hour POST Basic Training Course. POST certification, or credits toward said certification, may also be obtained based upon an evaluation of the applicant's prior experience and training in the area of law enforcement. After evaluating the material, POST proceeds to certify the applicant if the applicant's past training and experience satisfy the POST Basic Course requirements. If the applicant's past training and experience do not fully satisfy the POST Basic Course requirements, POST advises the employing agency of the deficiency and

identifies the additional training that the applicant must undertake in order to be certified. However, POST never determines or dictates where said training is to be undertaken.

Soon after he was hired by Respondents, Petitioner communicated with the Chicago Police Department and requested that the records of his training and experience with the Department be submitted to Respondents for transmission to, and evaluation by, POST; and said records were in fact submitted to Respondents. However, POST never received from Respondents any of Petitioner's records that would have in fact satisfied certain requirements for POST certification. Accordingly, POST recommended to Respondents that Petitioner attend a basic training academy to obtain certification. Respondents testified at the trial of this action, through their representative in charge of certification, that Respondents would have required Petitioner to attend a basic training academy to obtain POST certification even if such attendance had not been recommended by POST.

Pursuant to a memorandum dated August 22, 1975, Respondents directed Petitioner to attend the San Diego County Sheriff's Training Academy for the purpose of satisfying the requirements for POST certification. As of the dates on which this action was tried, Petitioner was the only person Respondents had ever assigned to the Sheriff's Training Academy for POST training.

Petitioner commenced training at the San Diego Sheriff's Training Academy on September 5, 1975, and his training at the Academy was scheduled to continue for a period of approximately four (4) months. However, on October 21, 1975, the Academy advised John Carpenter, Chief of the San Diego State

University Campus Peace Officer force (hereinafter referred to as "Carpenter"), that Petitioner's performance at the Academy was unsatisfactory and that Petitioner should be withdrawn from the Academy. Carpenter withdrew Petitioner from the Academy and the next day, October 22, 1975, as a result of the Academy's evaluation, Petitioner's employment with Respondents was terminated.*

At the time Petitioner was withdrawn from the Academy his overall grade point average was 70.04%, which was passing. Also, at the time Petitioner was withdrawn he still had over three (3) months left, on his 18-month time period, within which to obtain POST certification.

With respect to the San Diego County Sheriff's Training Academy, the following uncontradicted and unimpeached evidence was introduced at the trial.

First, pursuant to a complaint by another black citizen who attended the Academy, a Commissioner of the San Diego Civil Service Commission conducted an investigation of the Academy in December, 1975. As a result of this investigation the Civil Service Commission found "discrimination by the Sheriff's Academy in its administration of the Academy" and granted the complainant the requested relief.

Second, Petitioner testified that instructors at the Academy on several occasions used racial epithets, including the term "nigger", when referring to black persons.

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* Although Petitioner's termination letter mentioned certain additional reasons for his termination, Respondents admitted in trial testimony that, but for the evaluation and withdrawal request by the Sheriff's Academy, Petitioner would still be employed by Respondents as a campus peace officer.

Third, witness Robin Cheng testified that during the time he attended the Academy (the same time Petitioner attended) he also heard instructors use racial epithets.

Fourth, witness Regina Henderson testified relative to the discriminatory treatment she and another black person received while attending the Academy. Said discriminatory treatment included, but was not limited to, Ms. Henderson and the other black person being forced to participate in physical training and exercises at times when they were injured or ill, when the white trainees who were injured or ill were relieved from the physical training and exercises. In this regard Petitioner testified that he fractured his left heel on September 26, 1975, while participating in training at the Academy, and he was forced to continue his training without interruption, with a cast on his leg, until he was withdrawn from the Academy on October 21.

The aforementioned uncontradicted and unimpeached evidence was introduced at the trial to establish the fact that the training at the San Diego County Sheriff's Training Academy has a disparate impact on black persons. To further support this position, Petitioner also sought to introduce into evidence (1) certain apposite statistics and (2) a federal court Consent Decree entered in an action by the United States against various agencies of the County of San Diego -- including the San Diego County Sheriff's Department; said evidence tending to further establish the fact that the Sheriff's Academy training produced a racial pattern in the Sheriff's Department significantly different from that of the pool of applicants. The District Court rejected this evidence.

The District Court found, and decided this matter, in favor of Respondents and against Petitioner.

On appeal, the Court of Appeals for the Ninth Circuit affirmed the District Court based upon the following grounds:

> 1. Statistics relative to the percentage of black persons employed on the San Diego State University Campus Peace Officer force showed that the University does not discriminate against black campus peace officers in general;
>
> 2. The District Court did not clearly err in finding that the Sheriff's Academy POST program did not have a discriminatory impact on black persons; and
>
> 3. Statistics proffered by Petitioner regarding the racial composition of the San Diego County Sheriff's Department were not directly relevant to whether the Academy or the University discriminated.

After receiving the Memorandum Opinion of the Court of Appeals, Petitioner filed a petition for rehearing advising the Court of Appeals that, among other things, it had erred in concluding that the District Court had found against Petitioner on the issue of disparate impact. The Court of Appeals conceded this point and responded to the petition for rehearing with an order wherein it deleted from its Memorandum Opinion the reference to an absence of discriminatory impact, and added the following sentence: "Even had La Corbiere established a *prima facie* case of discrimination, we agree with the district court that the evidence established legitimate nondiscriminatory reasons, which were not merely coverups for discrimination, for La Corbiere's failure at the Sheriff's Academy and dismissal from the campus police force." The Court of Appeals denied the petition for rehearing.

REASONS FOR GRANTING THE WRIT

The overriding and patent error of the Court of Appeals in this action is two-fold. First, the Court of Appeals rebutted Petitioner's *prima facie* case of discrimination, established under the disparate impact theory (*Dothard v. Rawlinson* (1977) 433 US 321, 328-329, 97 S.Ct. 2720, 2726-2727; *International Bro. of Teamsters v. United States* (1977) 431 US 324, 335 n. 15, 97 S.Ct. 1843, 1854-1855; *Griggs v. Duke Power Company* (1971) 401 US 424, 91 S.Ct. 849), with a "disparate treatment" element of proof (*McDonnell Douglas Corp. v. Green* (1973) 411 US 792, 802, 93 S.Ct. 1817, 1824). In essence the Court of Appeals based its decision on the incongruous position that, even though Petitioner established that the training at the Sheriff's Academy had a disparate impact on black persons, Petitioner's unsatisfactory performance under that discriminatory training was a legitimate nondiscriminatory reason for the termination of Petitioner's employment.

Second, the Court of Appeals based its decision on a finding that, pursuant to a statistical comparison, "the University did not discriminate against black campus police officers in general" (B-1). Affirming the District Court decision against Petitioner on this ground was error because neither (1) an intent to discriminate nor (2) a history of discrimination on the part of the defendant-employer is an element of proof in a Title VII violation established under the disparate impact theory.

I.

THE DECISION OF THE COURT OF APPEALS IS IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT IN *DOTHARD V. RAWLINSON* AND *GRIGGS V. DUKE POWER COMPANY.*

Under the decisions of this Court there are two (2) equally effective methods by which a Title VII violation can be established: (1) the "disparate treatment" method and (2) the "disparate impact" method. See *Furnco Const. Corp. v. Waters* (1978) ___ US ___, 98 S.Ct. 2943, 2952 (Marshall, J., concurring); *International Bro. of Teamsters v. United States* (1977) 431 US 324, 335 n. 15, 97 S.Ct. 1843, 1854-1855. A plaintiff establishes a *prima facie* "disparate treatment" violation by raising a presumption (through the proof of certain facts) that he was not hired, not promoted, or fired because of his race. Once such a *prima facie* case is established, the burden then shifts to the defendant-employer to "articulate some legitimate, nondiscriminatory reason" for the adverse action. *McDonnell Douglas Corporation v. Green* (1973) 411 US 792, 802, 93 S.Ct. 1817, 1824.

Under the "disparate impact" method a *prima facie* Title VII violation is established by proof that a job requirement has a disproportionately adverse impact on a racial minority. Once such a *prima facie* case is established the burden shifts to the defendant-employer to show that the job requirement has "a manifest relationship to the employment in question" (*Griggs v. Duke Power Company* (1971) 401 US 424, 432, 91 S.Ct. 849, 854). See also *Dothard v. Rawlinson* (1977) 433 US 321, 328-329, 97 S.Ct. 2720, 2726-2727.

In the instant case, through uncontradicted and unimpeached evidence, Petitioner established that the training at the Sheriff's Academy had a disparate impact on black persons; said disparate impact resulting from a pattern and practice of overt racial discrimination against black persons. As noted previously, the Court of Appeals conceded the fact that Petitioner had established a *prima facie* "disparate impact" Title VII violation. However, the Court of Appeals affirmed the District Court by holding, in direct conflict with all applicable decisions of this Court, that Petitioner's *prima facie* disparate impact case could be rebutted by using Petitioner's alleged unsatisfactory performance under the discriminatory training at the Sheriff's Academy as a "legitimate nondiscriminatory reason" for Petitioner's termination. Indeed, in light of (1) Petitioner's twelve (12) years of unblemished service as a police officer prior to his employment with Respondents, (2) Petitioner's satisfactory performance during his employment with Respondents, including the recommendation that he be given tenure, and (3) the confirmed existence of a pattern and practice of overt racial discrimination at the Sheriff's Academy, it is difficult to understand how the Academy's assessment of Petitioner, a black person, can be apprehended in any way as credible.

II.

THE DECISION OF THE COURT OF APPEALS IS IN CONFLICT WITH DECISIONS OF THE EIGHTH AND NINTH CIRCUIT.

The Court of Appeals affirmed the District Court decision, in part, on the basis of a finding that "the University did not

discriminate against black campus peace officers in general." However, an employer's intent is immaterial with respect to a "disparate impact" Title VII case. As this Court stated in *Griggs v. Duke Power Company, supra*:

> ". . . good intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as 'built-in headwinds' for minority groups and are unrelated to measuring job capability.
>
> The Company's lack of discriminatory intent is suggested by special efforts to help the under-educated employees through Company financing of two-thirds the cost of tuition for high school training. But Congress directed the thrust of the Act to the *consequences* of employment practices, not simply the motivation" (401 US at 432, 91 S.Ct. at 854).

See also *Albemarle Paper Company v. Moody* (1975) 422 US 405, 422, 95 S.Ct. 2362, 2374 ("Title VII is not concerned with the employer's 'good intent or absence of discriminatory intent'"); *Washington v. Davis* (1976) 426 US 229, 246-247, 96 S.Ct. 2040, 2051 ("Under Title VII . . . , discriminatory purpose need not be proved"); *International Bro. of Teamsters v. Untied States* (1977) 431 US 324, 335 n. 15, 97 S.Ct. 1843, 1854 ("Proof of discriminatory motive, we have held, is not required under the disparate impact theory"); *Equal Employment Op. Com'n. v. Enterprise Ass'n. Steamfitters* (2 Cir. 1976) 542 F.2d 579, 587 ("We agree with the EEOC and the private appellants that good faith is not a defense in a Title VII case").

Nor does a "disparate impact" Title VII violation require proof of a past history of discrimination by the defendant-employer. As previously stated by the Ninth Circuit:

> "In *Griggs*, a residue of discrimination was found to have resulted in disfavored workmen being locked into job stagnation caused by earlier discriminatory employment practices. No such finding was specified or required in this case. But Title VII was enacted for remedial rather than punitive purposes. Historical discrimination need not be shown in order to obtain relief from discrimination in fact, regardless of its cause or motive" (*Gregory v. Litton Systems, Inc.* (9 Cir. 1972) 472 F.2d 631, 632).

Accord the Eighth Circuit, *Wallace v. Debron Corporation* (8 Cir. 1974) 494 F.2d 674, 675-676.

The Court of Appeals' specific finding that the University did not discriminate against black campus peace officers in general is indicative of the Court's acceptance of an argument asserted by Respondents in both courts below; that argument being, since the San Diego County Sheriff's Training Academy is an institution separate from, and independent of, the Respondents' educational institution, and since Respondents neither administer nor control the training at the Academy, Respondents could legally terminate Petitioner's employment as a result of his performance at the Academy notwithstanding the discriminatory administration of the Academy. Such a position is clearly at odds with the *Griggs* holding.

A job requirement or criterion challenged on the disparate impact theory need not have been created by the employer or be

in any way indigenous to the employer's business. All that is needed in order to establish a Title VII violation is proof of the employer's *use* of a requirement or criterion that has disparate impact. In *Griggs v. Duke Power Co.* (1971) 401 US 424, 91 S.Ct. 849, one of the job requirements scrutinized by this Court was the necessity "to register satisfactory scores on two professionally prepared aptitude tests" (401 US at 427-428, 91 S.Ct. at 852). The two tests in question were the Wonderlic Personnel Test and the Bennett Mechanical Comprehension Test. Neither test was created by the Duke Power Company (the defendant-employer), nor was either test in any way indigenous to the business of the Duke Power Company. The tests were created and administered by entities in no way connected with the Duke Power Company or its business. However, the Duke Power Company *used* its employees' performance relative to said tests in making employment decisions. This Court held that this *use* of tests which have a disparate impact on Negroes, and which do not "have a manifest relationship to the employment in question" (401 US at 432, 91 S.Ct. at 854), is violative of Title VII. Indeed, the proposition that Title VII is violated by an employer's *use* of a discriminatory criterion, even if the criterion is not indigenous to the employer's business, is entirely consistent with Congress' direction of the "thrust of the Act (Civil Rights Act of 1964) to the *consequences* of employment practices, not simply the motivation" (*Griggs v. Duke Power Co., supra,* at 432, and 854).

Accordingly, with respect to the instant case, the fact that the employment factor in question -- training at the San Diego County Sheriff's Training Academy -- was neither created nor administered by Respondents is immaterial. Respondents' use of Petitioner's performance relative to said discriminatorily

administered training in terminating Petitioner's employment constituted the Title VII violation.

Finally, Respondents certainly cannot argue that successful completion of the training at the San Diego County Sheriff's Training Academy was a "business necessity", since (1) no other campus peace officer employed by Respondents had engaged in, or completed, said training and (2) there were other methods by which Petitioner might have satisfied the POST requirement.

CONCLUSION

Petitioner respectfully suggests that this case is unique in that, instead of being based upon statistics from which disparate impact might be presumed, Petitioner's *prima facie* case is based upon uncontradicted, unimpeached evidence of a pattern and practice of overt racial discrimination at the Academy. Thus, this case is based upon the *fact* of disparate impact rather than the statistical *presumption* of disparate impact. Moreover, although it is not one of the plaintiff's elements of proof in a disparate impact case, Petitioner in this action produced evidence of how the discrimination at the Sheriff's Academy adversely affected him individually; said evidence including the fact that Petitioner was required to continue full training at the Academy after his foot had been fractured and placed in a cast.

For the reasons set forth in this petition, a writ of certiorari should be issued to review the opinion of the Ninth Circuit in this action.

Respectfully submitted,

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APPENDICES

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ANDRE W. LA CORBIERE,

Plaintiff,

vs.

SAN DIEGO STATE UNIVERSITY, and TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY AND COLLEGES,

Defendants.

Civil Case No. 76-1026-E

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on for trial and was heard on January 25, 26 and 27, 1978 in the Courtroom of the Honorable William B. Enright, Judge Presiding, sitting without a jury. Plaintiff appeared by his attorney Lloyd Edward Tooks, Defendant appeared by its attorneys, Evelle J. Younger, Attorney General, by William R. Winship, Jr., Deputy Attorney General.

The Court having considered the written and oral arguments that have been made, the cause having been submitted, and the Court being fully advised in the premises, the Court makes the following:

1. Plaintiff, a Negro citizen of the United States, had been employed by the Chicago Police Department for a period in excess of twelve years prior to June 1974.

2. On or about June 1974 plaintiff applied for a position as a campus peace officer with the University Police Department at defendant San Diego State University.

3. On or about August 12, 1974 plaintiff was offered a position by defendant as a campus peace officer.

4. On or about August 15, 1974, plaintiff became employed by defendant in a probationary status as a campus peace officer.

5. Pursuant to California Penal Code section 832.4, plaintiff was required to become certified by the Commission on Peace Officer Standards and Training ("POST") within the first 18 months of his employment by defendant. This condition of employment was not imposed by defendant; it was imposed by statute. A POST certificate may be obtained upon completion of a 200-hour course at a POST-approved training academy. A POST certificate may also be obtained through equivalency training and experience. In either case, POST makes the final determination regarding certification.

6. On or about September 1974, defendant, through its employees, corresponded with POST in an attempt to have plaintiff POST certified through equivalency trianing. Defendant's efforts to have plaintiff POST certified continued throughout the spring of 1975. The defendant and its employees did all within their power to eliminate or to minimize the full requirements of a basic course as required by POST or by state

law. Employees Sisson, Lloyd, McDaniels and Scheufler were particularly helpful to plaintiff in this respect.

7. On or about June 1975, defendant was informed by POST that plaintiff would be required to attend a complete training course at a POST-approved academy in order to become POST certified.

8. Defendant normally requires its applicants for campus peace officer positions to obtain POST certification at a POST-approved facility in Modesto, California. In the normal course of events, applicants are required to leave San Diego and take POST training at Modesto. On or about June 1975, plaintiff advised defendant that he desired to remain in the San Diego area to obtain POST certification rather than go to Modesto for this purpose. Plaintiff's request was based on his family and church commitments and his private investigator's business. Defendant granted plaintiff's request and thus deviated from its normal practice solely for plaintiff's convenience.

9. On or about June 1975, plaintiff visited both the San Diego Police Academy and the San Diego Sheriff's Academy to determine whether or not either facility had space available for POST training. The San Diego Police Academy's class was scheduled to begin in October 1975 and consisted of 22 weeks of training. The police academy schedule, however, would not have permitted plaintiff to become POST certified within the requirements of Penal Code section 832.4. The Sheriff's Academy's 52nd Training Class was scheduled to begin in September 1975 and would have allowed plaintiff to complete his POST certification within the statutory time limits.

10. Plaintiff himself selected the Sheriff's Academy; defendant did not in any way require plaintiff to obtain POST certification at the Sheriff's Academy. On or about September 5, 1975, plaintiff entered the 52nd Class of the San Diego Sheriff's Training Academy. From the

outset, plaintiff performed poorly. Plaintiff continued to perform unsatisfactorily throughout both the physical and academic phases of the training program. The training academy advised defendant of plaintiff's unsatisfactory performance. Finally, on October 21, 1975, the Commander of the San Diego County Sheriff's Training Academy recommended that defendant withdraw plaintiff without further delay based upon his unsatisfactory performance. Defendant withdrew plaintiff from the academy.

11. On or about October 24, 1975 plaintiff was rejected during his probationary period as a campus peace officer by defendants and terminated from employment with defendant. Plaintiff's rejection was based upon his poor performance at the training academy and inadequacies in his performance as a campus peace officer as set forth in plaintiff's letter of rejection.

12. On or about December 1975, plaintiff filed a grievance with defendant regarding his rejection from probation. Although untimely, defendant considered plaintiff's grievance and granted plaintiff three months back pay in light of defendant's failure to apply certain notice requirements relating to plaintiff's rejection from probation as a campus peace officer.

13. Thereafter, plaintiff filed claims with both the Equal Employment Opportunity Commission and the Fair Employment Practices Commission. Both of plaintiff's claims were determined to be without merit and rejected.

14. During the spring and summer of 1976 plaintiff attempted to have POST conduct additional evaluations of his prior experience to determine the availability of equivalency training toward a POST certificate. As POST only conducts evaluations at the request of the employer agencies on behalf of its employees, plaintiff's submittals were

not evaluated. On or about June 1977, plaintiff's attorney submitted plaintiff's prior law enforcement training and records to POST for evaluation. At his request, POST conducted an evaluation and determined that plaintiff could be credited with 52 hours of equivalency training of the 200 hours required for POST certification. Despite the results of the POST evaluation, plaintiff would nevertheless have been required to attend an entire POST training course in order to become POST certified.

15. By order of the court, the oral ruling and comments of February 1, 1978 are attached hereto and incorporated herein by this reference as Exhibit A.

16. With specific reference to the pre-trial conference order and the issues of fact which were litigated upon the trial, the following findings are made:

A. At the time that plaintiff was rejected from probation, plaintiff was not sufficiently competent nor qualified to be a member of the defendant's University Police Force.

B. At the time of his application for the position of chief of defendant's University Police Force, plaintiff was not qualified.

C. Defendant was justified in terminating plaintiff's employment on the grounds specified in plaintiff's letter of rejection.

D. Plaintiff requested to remain in the San Diego area in connection with his training for a POST certificate.

CONCLUSIONS OF LAW

1. Plaintiff's termination from employment with defendant was not a violation of Title VII of the Civil Rights Act of 1964 (42 USC § 2000e, *et seq.*) nor the Civil Rights Act of 1870 (42 USC § 1981).

2. Plaintiff's termination from employment on the grounds alleged in defendant's letter of rejection was not a violation of Title VII of the Civil Rights Act of 1964 (42 USC § 2000e, *et seq.*) nor the Civil Rights Act of 1870 (42 USC § 1981).

3. Defendant's refusal to promote plaintiff to the position of chief of defendant's University Police Department was not a violation of Title VII of the Civil Rights Act of 1964 (42 USC § 2000e, *et seq.*) nor a denial to plaintiff of the full and equal benefit of defendant's rules and regulations.

4. Defendant's termination of plaintiff's employment was not an unlawful employment practice prescribed by the Civil Rights Act of 1964 (42 USC § 2000e-e(a)) Defendant's refusal to rehire plaintiff was not a violation of Title VII of the Civil Rights Act of 1964 (42 USC § 2000e, *et seq.*) nor a violation of the Civil Rights Act of 1870 (42 USC § 1981).

5. Defendant did not violate plaintiff's right to procedural due process by termination of plaintiff's employment without granting plaintiff a hearing.

6. Defendant did not violate plaintiff's rights to substantive due process by the termination of plaintiff's employment on the grounds specified in plaintiff's letter of rejection.

7. Defendant's assignment of plaintiff to the San Diego Sheriff's Training Academy for POST certification was not an unlawful employment practice proscribed by the Civil Rights Act of 1964 (42 USC § 2000e-2).

DATED: 4/6/78

HONORABLE WILLIAM B. ENRIGHT

FILED

JUN 4 1990

RICHARD H. DEANE
CLERK, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANDRE W. LA CORBIERE, Plaintiff-Appellant, v. SAN DIEGO STATE UNIVERSITY, and TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY AND COLLEGES, Defendants-Appellees.	No. 78-2561 DC No. CV 76-1026 MEMORANDUM

Appeal from the United States District Court
for the Southern District of California

Before: KILKENNY and CHOY, Circuit Judges, and EAST,* District Judge.

La Corbiere appeals from the district court's judgment that appellees did not violate Title VII of the Civil Rights Act of 1964 or 42 U.S.C. § 1981 by dismissing La Corbiere as a campus police officer for failing to complete satisfactorily a state-required Peace Officer Standards and Training (POST) certification program. We affirm.

As the statistics comparing the percentage of blacks in the San Diego work force with the percentage of blacks in the San Diego State University campus police force showed, the University did not discriminate against black campus police officers in general. And the district court did not clearly err in finding that the Sheriff's Academy

*The Honorable William G. East, Senior United States District Judge for the District of Oregon, sitting by designation.

POST program did not have a discriminatory impact on blacks. The statistics proffered by La Corbiere regarding the racial composition of the San Diego County Sheriff's Department were not directly relevant to whether the Academy's POST program or the University discriminated.

Finally, although it is true the University helped a white trainee gain readmission after her expulsion from another POST program, the University's refusal to help La Corbiere was not related to his race. The white trainee had been expelled for a single curfew violation and a single instance of drunkenness; La Corbiere's withdrawal was based on his entire performance at the Academy which, in the judgment of Academy officials, "demonstrated a near complete lack of responsibility, initiative, maturity, judgment, and desire to succeed academically."

AFFIRMED.

C-1

FILED

JUL 16 1980

RICHARD H. DEANE
CLERK, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANDRE W. La CORBIERE,

Plaintiff-Appellant,

v.

SAN DIEGO STATE UNIVERSITY, and TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY AND COLLEGES,

Defendants-Appellees.

No. 78-2561

DC No. CV 76-1026

ORDER

Before: KILKENNY and CHOY, Circuit Judges, and EAST,* District Judge.

The memorandum opinion in this matter as filed June 4, 1980, is amended as follows.

(1) The sentence on page 1, lines 24-26, which reads: "And the district court did not clearly err in finding that the Sheriff's Academy POST program did not have a discriminatory impact on blacks," is deleted.

(2) The following sentence is inserted on page 2, line 1, at the beginning of the paragraph: "Even had La Corbiere established a prima facie case of discrimination, we agree with the district court that the evidence established legitimate nondiscriminatory reasons, which were not merely cover-ups for discrimination, for La Corbiere's failure at the Sheriff's Academy and dismissal from the campus police force. *See*

*The Honorable William G. East, Senior United States District Judge for the District of Oregon, sitting by designation.

McDonnel-Douglas Corp. v. Green, 411 U.S. 792, 802-04 (1973); *Roller v. City of San Mateo*, 572 F.2d 1311, 1313 (9th cir. 1977)."

(3) On page 2, line 1, the word "Finally" is deleted; the word "although" is capitalized.

The petition for rehearing is denied.